

H.O., on behalf of minor child, J.C.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
BOROUGH OF NORTH PLAINFIELD,	:	
SOMERSET COUNTY,	:	
	:	
RESPONDENT.	:	
	:	
_____	:	

SYNOPSIS

Petitioning parent contested Board’s residency determination denying her son, J.C., a free public education . Petitioner contended J.C. lived with his uncle because his mother could not support him.

Having reviewed the documentation of the family’s economic hardship and noting that J.C. was emancipated when he turned eighteen on October 10, 1997, the ALJ found that neither J.C. nor his parent was liable for any tuition to the District in 1996 or 1997.

Commissioner adopted the initial decision as his own, noting that prior to October 10, 1997, the date on which J.C. turned eighteen, this matter was governed by *N.J.S.A. 18A:38-1b(1)*, the “affidavit student” provision; after October 10, the matter was governed by *N.J.S.A. 18A:38-1a*, J.C. was emancipated and chose his own residence.

MAY 11, 1998

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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. No exceptions were filed by the parties.

Upon careful and independent review of the record in this matter, the Commissioner determines to affirm the initial decision of the Administrative Law Judge (ALJ). In so doing, the Commissioner underscores that, *prior to October 10, 1997*, the date on which J.C. turned 18 years old, this matter was governed by *N.J.S.A. 18A:38-1b(1)*, that portion of the relevant statute known as the “affidavit student” provision, which permits a child who is living with another person who is domiciled in the district to attend school free of charge, under certain conditions, where the domiciliary provides the requisite affidavits and proofs. Like the ALJ, the Commissioner is satisfied that, for the aforementioned period of time, J.C. was entitled to attend school in the District pursuant to *N.J.S.A. 18A:38-1b(1)*.¹

¹ It is also noted that, where a Board determines that a student is not entitled to attend school free of charge within its districts, pursuant to *N.J.S.A. 18A:38-1b(1)*, it is the *resident* who is authorized to appeal the Board’s decision to the Commissioner of Education.

The Commissioner recognizes that “[a] child, in law, can have no residence of its own, and can only lawfully acquire one when it has been emancipated.” *Mansfield Township Board of Education v. State Board of Education*, 101 N.J.L. 474 (1924). As the *Mansfield* case established, the domicile of a child follows that of his father, parent or guardian having legal control over him, until he is emancipated and chooses his own residence. *Mansfield* at 478, 479, 480. Further, “[r]eaching the age of 18 establishes *prima facie*, but not conclusive proof of emancipation.” *Bishop v. Bishop*, 287 N.J. Super. 593, 597 (Chan. Div. 1995). That is,

the emancipation of a child occurs when the fundamental dependent relationship between parent and child is terminated. When *a child* moves beyond the sphere of influence and responsibility exercised by a parent and obtains independent status on his or her own, generally he or she will be deemed emancipated. (Id. at 598) (emphasis in text)

In that the Board presents no evidence to rebut the presumption that J.C. was emancipated by virtue of his turning 18 years of age, and does not except to the ALJ’s finding that J.C. was a domiciliary of the Borough of Plainfield, the Commissioner accepts the ALJ’s conclusion that J.C. was entitled to a free public education in the Board’s District after October 10, 1997, pursuant to N.J.S.A. 18A:38-1a.

Accordingly, the initial decision of the ALJ is adopted for the reasons expressed therein, and the Board is hereby ordered to continue to allow J.C. to attend school in its District, free of charge.²

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

MAY 11, 1998

² This decision, as the Commissioner’s final determination in the instant matter, may be appealed to the State Board of Education pursuant to N.J.S.A. 18A:6-27 *et seq.* and N.J.A.C. 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.